

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2007

CORAM

THE HONOURABLE Mr. JUSTICE P.D.DINAKARAN
and
THE HONOURABLE MR. JUSTICE P.P.S. JANARTHANA RAJA

Writ Appeal Nos.192 & 193 of 2003

A. Valliammal

.. Appellant in both
the appeals

Vs

1. Urban Land Tax Appellate Tribunal
(Principal Sub Judge),
Tiruchirapalli.

2. The Assistant Commissioner,
Urban Land Tax, Trichy.

.. Respondents in
both the appeals

Writ Appeals under Clause 15 of Letters Patent against the common order dated 25.10.2002 made in Writ Petition Nos.13848 and 13849 of 1996.

Prayer in WP.13848 and 13849 of 1996 writ petition filed under Article 226 of constitution of India praying for issuance of certiorari to call for records pertaining to the order made in ULT CMA.70/91 and 71/91 dated 7.6.1996 by the Tamilnadu Urban Land Tax Appellate Tribunal, Trichy (Principal Subordinate Judge Court), Trichy viz the 1st respondent herein confirming the order made in ULTC.No.22/1391/Sengulam/ 1 and 2 dated 15.7.1991 by the Asst.Commissioner of ULT Trichirapalli, the 2nd respondent herein.

For Appellant .. Mr.K.Chandrasekaran
For Respondents .. Mr.Haja Nazrudeen
Spl. Govt. Pleader (T)

J U D G M E N T

(Delivered by P.D.DINAKARAN, J.)

The correctness of the order passed by the Assistant Commissioner of Urban Land Tax, Trichirapalli, dated 15.7.1991 made under Section 11(2)/11(3) read with Section 5-C and 40-A of the Tamil Nadu Urban Land Tax Act, is the issue that arises for our consideration in the above writ appeals.

2.1. The Tamil Nadu Urban Land Tax Act, 1966 (hereinafter referred to as "the Act") is intended to provide for the levy of tax on urban land in the State of Tamil Nadu. Section 2(13) of the Act defines the urban land and the same reads as hereunder:

"Urban land" means any land which is used or is capable of being used as a building-site and includes garden or grounds, if any, appurtenant to a building but does not include any land which is registered as wet in the revenue accounts of the Government and used for the cultivation of wet crops.

Explanation: For the purposes of this clause, any site on which any building has been constructed shall be deemed to be urban land.

2.2. Section 2(13) of the Act together with the explanation thereunder, brings within the ambit of taxation, the land occupied by a building also, because when a building is put up, the land as such ceases to exist, as the building cannot stand in vacuo and the land and building become inseparable so long as the building stands. The value of the building includes the value of the land normally. When the building is subjected to tax in various forms, the tax falls on the land also. Consequently, the question arises as in the instant case whether merely by existence of a building in an agricultural land, the land ceased to be the agricultural land.

3. According to the appellant/writ petitioner, she owns an extent of 4.36 and 2.54 acres of land in Survey Nos.7/2 and 8, Sengulam village, Trichy circle; a building thereon viz., Alamelu Thuvary Mill, field, tanks, cattle fields and three residential buildings; and an extent of 1.50 acres of agricultural land and 1280 sq.meter of vacant land.

4.1. Concededly, in the instant case, even though Section 7 of the Act contemplates that the owner of the urban land is liable to submit a return, the land owner had not filed any return as contemplated. However, if the owner of the urban land fails to furnish the return, Section 9 of the Act, empowers the Assistant Commissioner to obtain necessary information with regard to the land in question and Section 9 reads as hereunder:

"9. Collection of information:- If any owner of urban

land fails to furnish the return under section 7, the Assistant Commissioner may obtain the necessary information in respect of the particulars specified in section 7, either by himself or through such agency as he thinks fit."

4.2. Where no return is filed by the owner of the urban land as per Section 7 of the Act, Section 11 of the Act prescribes the procedure and empowers the Assistant Commissioner to pass necessary orders of assessment in writing, determining the market value of the urban land and the amount of urban land tax in respect of the land. Section 11 reads as follows:

Procedure in case where no return is filed:-

(1) Where the owner of urban land has failed to furnish the return under Section 7, and the Assistant Commissioner has obtained the necessary information under Section 9 he shall serve a notice on the owner in respect of each urban land specifying therein:-

(a) the extent of the urban land;

(b) the amount which, in the opinion of the Assistant Commissioner, is the correct market value of the urban land; and direct him either to attend in person at his office on a date to be specified in the notice or to produce or cause to be produced on that date any evidence on which the owner may rely.

(2) After hearing such evidence, as the owner may produce and such other evidence as the Assistant Commissioner shall, by order in writing, determine the market value of the urban land and the amount of urban land tax payable in respect of such urban land.

(3) Where the owner has failed to attend or to produce evidence in pursuance of the notice under sub-section (1), the Assistant Commissioner shall, on the basis of the information obtained by him under section 9, by order in writing, determine the market value of the urban land and the amount of the urban land tax payable in respect of such urban land.

4.3. A harmonious reading of Sections 2(13), 7, 9 and 11 of the Act contemplates that a notice in writing must be given to the land owner before passing any order under Section 11 of the Act as referred to above. A careful reading of Section 11 of the Act further makes it clear that in case the owner of urban land fails to furnish a return under Section 7 and the Assistant Commissioner has obtained necessary information as per Section 9 of the Act, he shall serve notice in respect of each urban land, hold an enquiry and record the evidence.

4.4. It is evident from the impugned assessment order dated 15.7.1991 that a notice in Form 4-B was served on the appellant/writ petitioner on 4.6.1991, fixing the date of hearing on 20.6.1991 and thereafter, an order was passed, as against the column 'result of enquiry', as hereunder:

"No. The urban land holder neither appeared for enquiry

nor filed any objections. Based on the Special Deputy Tahsildar's report and after inspecting the land in question, tax is levied."

4.5. Of course, it is clear that the land owner neither appeared for the enquiry nor filed any objection or details of record. But, the Assistant Commissioner had chosen to pass an order based on the information gathered by the Special Deputy Tahsildar, acting as an agent of the Assistant Commissioner. That apart, it is also evident from the impugned order that the Assistant Commissioner himself had made an inspection of the land in question. But, unfortunately, neither the date of report of the Special Deputy Tahsildar nor the date of inspection by the Assistant Commissioner is mentioned in the assessment order.

4.6. It is evident from the impugned order that Form-4B was served on the land owner on 4.6.1991 and the date of hearing was fixed on 20.6.1991, presumably satisfying 15 clear days as contemplated under Form-4B. Therefore, had any inspection been held, it should have been either after 20.6.1991 or before 15.7.1991 viz., the date of the impugned order of the Assistant Commissioner.

4.7. If that be so, after treating the land owner as ex parte, whether the Assistant Commissioner is right enough to place reliance on the information collected through the Special Deputy Tahsildar under Section 9 of the Act or inspection conducted on the land in question, without a further notice to the appellant, is the issue that arises for consideration, for testing the validity of the impugned order dated 15.7.1991. The only answer could be, had the information been obtained by the Special Deputy Tahsildar or by himself, in either case, a notice should have been given to the appellant/land owner, or otherwise such report or the information obtained, cannot be relied upon against the land owner.

4.8. Even though Section 9 of the Act does not statutorily contemplate a notice, there is an inbuilt requirement to satisfy the principles of natural justice that a notice should be given to the land owner by the original authority or the appellate authority by himself or before obtaining any information about the land for collecting particulars under Section 7 of the Act, otherwise it would not only violate the principles of natural justice, but also attracts Article 14 of the Constitution of India on the ground of arbitrariness and unreasonableness exercise of power.

4.9. It is apparent on the face of the records that the Assistant Commissioner himself had conducted inspection on the impugned land and collected information through his agency viz., Special Deputy Tahsildar as contemplated under Section 9 of the Act, without giving a notice to the appellant/writ petitioner. If that be so, neither the report of the Special Deputy Tahsildar nor the inspection report of the Assistant Commissioner form the basis for rendering a finding against the land

owner, for passing the order under Section 11(3) of the Act.

4.10. This aspect of the case was unfortunately neither raised before the first appellate authority nor before the learned single Judge and therefore, neither the first appellate authority nor the learned single Judge was in a position to appreciate the grievance of the appellant in this regard. Hence, it may not be proper for this Court to nonsuit the legitimate right of the appellant/writ petitioner to challenge the correctness of the order passed by the Assistant Commissioner under Section 11(3) of the Act since the learned Special Government Pleader appearing for the Revenue is not in a position to report as to the compliance of the procedure under Sections 9 and 11 of the Act referred to above.

4.11. As apparent on the face of the impugned order dated 15.7.1991 passed by the original authority, we have no other option except to interfere with the same and accordingly the same is quashed, leaving the matter for the authorities concerned to proceed further, if they desire to do so.

With the above observation, these writ appeals are disposed of. No costs.

ATR

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. Urban Land Tax Appellate Tribunal
(Principal Sub Judge),
Tiruchirapalli.

2. The Assistant Commissioner,
Urban Land Tax, Trichy.

+1 cc to Mr.K.Chandrasekaran, Advocate Sr.No.40513.

+1 cc to Spl.Government Pleader Sr.No.40841.

MJ(CO)
dcp/30.7.07

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